By hand delivered

July 14, 2006

Ms. Andrea Nixon, Clerk
Cable Television Division
One South Station
Boston, MA 02110

Re: CTV 06-1, Comments of Issuing Authorities and Access Centers

Dear Ms. Nixon:

We have attached the joint comments of nineteen Massachusetts municipalities, the Northeast Region and the Massachusetts Chapter of the Alliance for Community Media and three access centers, for entry into the record in CTV 06-1, Notice of Public Hearing and Request for Comment by the DTE - Cable Television Division on Proposed Amendments to Rules and Regulations Governing the Cable Television Licensing Process.

Thank you for your attention to this matter. Please do not hesitate to contact us should you require additional information concerning the attached comments.

Very truly yours,

William August

Peter Epstein

Attachments
cc: Commenting Parties

Before the

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS & ENERGY

CABLE TELEVISION DIVISION

Proposed Amendments to	**)**	
Rules and Regulations Governing the	**)**	
Cable Television Licensing Process -	**)**	
Notice of Public Hearing and	**)**	**Docket No. CTV 06-1**
Request for Comments	**)**	**July 13, 2006**

COMMENTS OF
THE TOWNS OF BELMONT, BROOKLINE, CANTON, DARTMOUTH, DEDHAM, GROVELAND, HINGHAM, LAKEVILLE, LITTLETON, MILTON, NATICK, NEEDHAM, NEWTON, NORTHBOROUGH, NORWOOD, SUDBURY, WESTFORD, WILBRAHAM AND WILMINGTON,
THE MASSACHUSETTS CHAPTER OF THE ALLIANCE FOR COMMUNITY MEDIA, THE NORTHEAST REGION OF THE ALLIANCE FOR COMMUNITY MEDIA, BOSTON COMMUNITY PROGRAMMING AND ACCESS FOUNDATION, INC., CAMBRIDGE COMMUNITY TELEVISION, INC. AND WORCESTER COMMUNITY CABLE ACCESS, INC.

I. Introduction

The Towns of Belmont, Brookline, Canton, Dartmouth, Dedham, Groveland, Hingham, Lakeville, Littleton, Milton, Natick, Needham, Newton, Northborough, Norwood, Sudbury, Westford, Wilbraham and Wilmington (the "Issuing Authorities"), the Massachusetts Chapter of the Alliance for Community Media ("Mass Access"), the Northeast Region of the Alliance for Community Media ("ACM-NE"), Boston Community Programming and Access Foundation, Inc., Cambridge Community Television, Inc. and Worcester Community Cable Access, Inc. (collectively "the Commenting Parties"), hereby submit comments on the Cable Television Division's Notice of Public Hearing and Request for Comments on Proposed Amendments to Rules and Regulations Governing the Cable Television Licensing Process (CTV Docket 06-1, May 5, 2006). The municipalities are responsible for cable television licensing and therefore have a substantial and direct interest in amendments to the licensing process. Mass Access and ACM-NE are comprised of access centers responsible for Massachusetts community cable facilities governed by cable licenses, and therefore also have a substantial and direct interest in possible amendments to the cable licensing process.

Massachusetts municipalities have already made clear to the Cable Division their view that past and current cable licensing experience plainly demonstrates that initial cable television licensing takes much, much longer than 90 days. See e.g., municipal and MMA comments already filed in this proceeding. The inadequacy of the proposed timetable becomes plain upon outlining customary and necessary municipal licensing tasks that are inherently complex, deliberative and protracted in nature, as discussed below. The Commenting Parties recommend that the Cable Division take judicial notice of its own public records of recently completed RCN initial licensing, which provide strong record evidence that good faith, diligent initial licensing

requires approximately one year. The Commenting Parties also respectfully request that the Cable Division take judicial notice of its public records of other initial licensing proceedings, which provide compelling empirical evidence that good faith, properly conducted licensing proceedings require much more than 90 days to complete. In this connection, the Cable Division should recognize, as explained below, that contemporary initial licensing remains as time-consuming to resolve as in the past, as the underlying issues are as complex or more complex, and as important, as in the past.

In these Comments (Part II. D), we detail how there are numerous other procedural flaws (other than the impossible timetable) in the proposed regulation. The existing licensing framework has well-served municipalities and cable operators for almost thirty years. These procedures have allowed municipalities to license competitors such as RCN and municipal light departments in the communities where competitive licenses were sought. These competitors completed initial licensing with reasonable timetables, and the licensing framework was able to promote competition to incumbent operators wherever new entrants applied. As detailed below, the changes proposed in Verizon's petition are unnecessary, unfair, extreme and against the public interest.

II. The Proposed Regulation Would Gut the Licensing Process and Frustrate Municipal Ability to Negotiate Cable Franchises Responsive to Community Needs.

As summarized by the Cable Division, under the regulation proposed by Verizon, the process would be as follows:

> "No later than 60 days after the application is filed, the issuing authority would hold a public hearing to assess the qualifications of the applicant (Proposed Regulation 3.10(1)). The Issuing Authority's assessment of the applicant would be limited to the application, any amendments thereto, and oral and other testimony on the hearing record (Proposed Regulation 3.10(2)). Following the hearing, the issuing authority would have 30 days in which to issue its written decision, and if the application is approved, issue a license (Proposed Regulation 3.10(4))." Cable Division's Notice at p.3.

The Commenting Parties strenuously oppose the proposal to reduce initial cable television licensing to ninety (90) days. The proposal would drastically and unfairly gut the municipal cable licensing process. In such a timeframe, Mayors and Boards of Selectmen, acting in their capacity as license Issuing Authorities, would not have nearly enough time to responsibly and prudently review the license applicant's proposal and qualifications, identify important community cable needs, hold multiple negotiating sessions, undertake extensive document drafting or revisions, conduct related meetings and hearing(s), all as inevitably needed in the licensing process. The historical record of licensing shows that the foregoing cannot be completed in 90 days and the Cable Division is well aware of this. This is a rulemaking, not an adjudication, and administrative agencies have considerable discretion in rulemaking and quasi-legislative action. The Cable Division therefore should exercise its discretion to not adopt extreme rules that would gut local licensing.

While a 90 day licensing timetable is far too short and would gut municipal ability to undertake a rational, deliberate and responsible process, the proposed regulation would also undermine several other long-established licensing practices that serve the public interest. For example, the regulation would delete the requirement and the time needed for the municipality to

draft and issue community needs specifications, as now done by municipalities in the "Issuing Authority Report," (IAR) which is the functional equivalent of a Request for Proposal (RFP). Indeed, the regulation includes no reference to any public hearing or public comment proceeding on the licensee's proposal for the community, as the regulation states explicitly that the hearing and municipal decision shall be based on consideration of the licensee's "qualifications" See Proposed Reg. 3.10(2). We urge that the proposed regulation is deficient for not making any explicit reference to the necessity of a public hearing on the substance of the licensee's proposal. The Commenting Parties urge that there are numerous other problems with the proposed regulation, and these problems are detailed further in the comments below.

State law charges municipal officials ("Issuing Authorities") with the duty of implementing the licensing process, MGL c. 166A, s.1. Municipal officials have extensive experience with licensing, and know first hand what is required for a reasonable licensing timetable. Moreover, the Cable Division's own precedents repeatedly emphasize that with respect to cable licensing, the role of the local Issuing Authority is "paramount." United Cablevision Funding, LP v. Townsend, CATV Docket No. A-45, p.6 (November 6, 1984). Accordingly, the comments and lessons learned from municipal officials in decades of prior licensing should be afforded significant weight in the Cable Division's deliberations. Ignoring public records which evidence Issuing Authority need for lengthier licensing would be unreasonable, and would frustrate the intent of the legislature to enable municipal Issuing Authorities to discharge their role in a responsible manner. As noted, the Cable Division's own public records and daily contact with licensing officials provide the Cable Division with the sufficient expertise, background and record evidence to support a finding of the inadequacy of a 90 day licensing process, and it is incumbent on the Cable Division to decline action on the Verizon proposal based on its own expert perspective on the evidence in this matter.

In the following section we have outlined tasks necessary, or frequently required, in an initial licensing process to illustrate the complexity and deliberative nature of, and the time required for, the process.

A. **The Initial Licensing Timetable Involves Multiple Time-Consuming and Complex Tasks Which Require Far More Time than Ninety Days**.

When cable licensing tasks are objectively viewed in their totality, it is readily understandable why municipalities strenuously urge that a 90 day cable licensing process is impossible. The following tasks are necessary for many municipalities and their cable committees, or attorneys in the conduct of rational, meaningful cable licensing:

1) Circulating the draft license proposal to members of the Issuing Authority, Cable Advisory Committee and other parties that may advise the Issuing Authority, e.g., Public Works Department, Town Engineer, MIS, School Technology Staff, and other interested parties. (Frequently, filing of license application triggers municipal need to appoint new Cable Advisory Committee members and fill Committee vacancies, if any, which may involve interviews and a Selectmen's meeting, and several weeks may be required for appointment of full panel for licensing.)

2) Allowing municipal officials reasonable time to review the applicant's proposal, which often includes review of a very lengthy, detailed and complex draft cable license (which has been the case with Verizon draft licenses) and review of other application documents. This step alone can take 3 - 6 weeks for municipal officials who are attending to multiple other (and often more pressing) municipal responsibilities and who need time for studying the proposal and

draft license and for outlining and drafting numerous possible revisions. Many municipal officials require several meetings for internal discussion of the draft, which can add several weeks to a prudent and reasonable process. If the initial license applicant is a start-up or venture capital company, additional time is necessary for due diligence to review the applicant's track record (if the applicant has a track record) and for review of financial statements and applicant's other disclosures.

3) Allowing municipal officials time to determine if it is desirable or possible to seek legal counsel and legal participation in the process. Review by counsel is particularly important where the Applicant's draft license contains novel legal issues and triggers novel level playing field issues, as has been the case with Verizon and other competitive licensing. Because Town counsel may not always have a background in the specialized issues of cable licensing, the Town may have to look for outside special counsel.

4) Allowing municipal officials reasonable time to meet and consult with legal counsel; allow cable committee time to meet with legal counsel; allow legal counsel time to review lengthy and complex license material, as well as key local issues.

5) Allowing reasonable time for municipal officials (and/or counsel) to review the incumbent's cable license relative to level playing field issues and preparing a level playing field analysis (may take a few weeks preparation and often requires additional time to research existing license requirements and level playing field law). It warrants emphasis that because incumbent cable operators require level playing field clauses in their licenses, and these clauses have been invariably upheld by courts, an issuing authority must include level playing field analysis in the licensing proceedings, which adds steps and time to the process.

6) Allowing municipal officials and the public time and opportunity to participate in the identification of priority cable needs, which may involve time-consuming review of, and deliberative meetings on, community studio and other cable technology needs and budgets. In many communities, Cable Committees require several weeks to inquire into and analyze specific studio equipment/budget needs as well as I-Net upgrade needs. In other communities, the parties have needed additional weeks to figure out how and where Verizon will be able to interconnect its cable system to pick up and transmit PEG programming. Because the municipal priority in licensing is to tailor the license to meet community needs, adequate time must be allowed to ascertain needs.

7) Drafting and preparing a document with licensing and/or negotiations specifications, to function as either an IAR/RFP or negotiations outline. This can be a substantial undertaking and may require several weeks. Obtaining Cable Committee and Issuing Authority approval can take several more weeks. It should be noted that the steps identified in paras. 7 and 8 alone can easily take 90 days when proceeding diligently.

8) Negotiating with the Applicant, which usually takes several months, as evidenced by actual experience, and as shown by recent experience with both RCN and Verizon. Reasonable and productive negotiations require adequate time, time which allows the parties to reach agreement. If an Issuing Authority does not have adequate time to negotiate reasonable license provisions, there is increasing pressure on the Issuing Authority to deny the license application, resulting in costly denial proceedings.

9) Briefing the Board of Selectmen by the Cable Committee or Counsel following negotiations. Scheduling and completion can take several weeks;

10 Follow-up work on all of the foregoing, including meetings to review revised license documents and meetings to follow-up negotiations on possible compromises, both of which are inevitably necessitated by the dynamics of negotiation. This can require several weeks or months, depending on the number of open issues in the negotiations.

11) Scheduling, preparing for and holding public hearing; time for supplemental hearing if hearing is continued by Selectmen.

12) Drafting and revising final licensing documents which frequently requires several weeks for the applicant and Issuing Authority to exchange document revisions and to conduct careful review of subsequent revisions; circulation of revisions to cable committee; and time for cable committee and/or Issuing Authority to review such subsequent drafts (an inherently deliberative process requiring weighing of novel and complex factors).

13) Leaving some time for miscellaneous additional, sometimes unforeseen time-consuming steps. In the Verizon licensing process, for example, shortly after the license applications were filed, several Title II companies supported federal legislation to fundamentally restructure cable system franchising and operations, necessitating municipal due diligence and time examining, reviewing and discussing the impact of the applicant-supported legal changes outside of, but relevant to, the local licensing process. This required review of multiple lengthy and complex versions of the bills. It would be unfair and against the public interest to not factor in the need for municipalities to have adequate time to address and consider these basic legal developments in the course of a licensing process. Other Title II carriers initiated proceedings at the FCC to modify licensing proceedings during the pendency of the current Verizon licensing, thus requiring some additional municipal time on that matter. Likewise, it is essential to leave additional time (not reduce time) when the nature of contemporary initial licensing is raising so many novel licensing questions that may require municipal study, as occurred after issuance of several regulatory decisions on Verizon licensing. See e.g., New York State Public Service Commission, Verizon Massapequa Park Order (December 14, 2005). Leaving adequate time for consideration of these new issues is a matter of fundamental fairness to municipalities and all involved in cable licensing.

Admittedly, every municipality is different in licensing activities and due diligence, and not all of the above tasks will be implemented in the same manner or with the same time frame in every municipality. However, the above tasks are commonly implemented in one form or another and the various necessary procedures and steps, when taken as a whole, require approximately twelve (12) months for initial licensing. Moreover, the above tasks are not ministerial or perfunctory in nature, but are typically deliberative and protracted, and part of responsible execution of the municipality's responsibilities and due diligence. It is simply not possible, desirable or in the public interest to reasonably and deliberately perform such tasks in any time period close to 60 days pre-hearing, and 30 days post hearing.

As discussed above, years of experience and public records of prior licensing show that the above tasks cannot be conducted within a ninety (90) day period. If the above tasks were allocated time to be performed within the 60 day pre-hearing period, a municipality would have approximately 4 days per task, notwithstanding most of the tasks require several weeks or months and many involve complex, inherently deliberative proceedings. If the above tasks were performed within the total 90 day process (including post-hearing window), municipalities would have approximately 6 days per task, to perform functions which require weeks or months each. The proposed timetable would make responsible and rational deliberations, research, drafting

and negotiations impossible. This would gut local licensing and would therefore undermine or be in conflict with the fundamental framework of MGL c. 166A, which seeks to establish meaningful local licensing.

The impracticality of literally squeezing so many necessary licensing activities into a 90 day process is exacerbated by the fact that many (if not most) municipalities rely on volunteer cable advisory committees to conduct license negotiations and identify and analyze cable needs. These volunteer committees generally can meet approximately one or two evenings per month. In a typical licensing process, assuming bi-weekly meetings, a volunteer committee would only be able to meet for ascertaining needs and negotiating a license, four times in the 60 day period leading up to the public hearing to be held by the 60th day. Such a high-speed process would be onerous and burdensome to volunteer committee members, and in many cases would necessitate greater reliance on outside consultants or attorneys, something that many communities cannot afford.

The arbitrariness of the proposed regulation is underscored by drawing attention to the simple fact that two key tasks-- negotiation and license drafting (or drafting of revisions)-- tend to require far more than 90 days, as has been evidenced repeatedly by actual experience of municipal officials and cable operators alike. When all the other tasks are added in, the proposed 90 day timetable is grossly inadequate. The public record of past initial licensing, including current Verizon licensing, makes this more than abundantly clear.

In light of the complexities of the initial licensing process as detailed above, we respectfully reiterate to the Cable Division that municipal officials find the concept of a 90 day licensing process inadequate, unfair, extreme and against the public interest. It is extremely unfair to municipal officials to expect them to conclude major contract negotiations and issue a responsibly drafted contract document within ninety days. This is especially true in licensing involving level playing field analysis and disposition of novel licensing issues raised by Verizon. The only party that will benefit from such a short and inadequate period is Verizon. The Commenting Parties do not believe that it benefits the public interest to sacrifice the needs of so many other parties.

B. Other Evidence as to the Inadequacy of the Proposed 90 day Timetable and Discussion of How the Applicant can otherwise Reduce Delay in Licensing

The history of cable licensing supports the view that a licensing process of at least twelve (12) months in length should be maintained (as currently prescribed for applicant-initiated licensing). For example, Congress recognized that renewal licensing requires a window of several years for a franchising authority to responsibly identify a community's cable needs, negotiate, draft and issue a proper cable license. 47 U.S.C. 546. Indeed, the risks to and complexity of initial licensing are greater than the risks faced in renewal licensing. In renewal, the municipality is dealing with an existing cable system with a proven track record as a cable operator in the community. In initial licensing, the municipality may be reviewing the proposal of a cable operator with no cable service track record in the community (or elsewhere). In this connection, the Cable Division must recognize that the proposed licensing rules would be applicable not just to Verizon, but would also apply to new start-up companies that may be unknown and that may be high risk, start-up ventures. Further, initial competitive licensing is more complicated than renewal licensing as it involves level playing field analysis, not just customary licensing activity.

As noted above, this history is evidenced by RCN's experience, and the Commenting Parties ask that the Cable Division take judicial notice that RCN was able to conclude initial licensing proceedings in a reasonable manner under the existing licensing rules. Town after town that initiated licensing proceedings with RCN had no problem completing the licensing in a timely manner. Towns are generally anxious to expedite competition, assuming the applicant files a completed license application and provides a reasonable proposal. RCN (itself a competitive cable operator) has publicly stated that the existing rules enabled RCN and municipalities to conclude licensing in a timely manner. RCN acquired more than 14 licenses and managed well under the existing rules notwithstanding that it had the additional burden of having to construct new systems, whereas Verizon already has built its new systems and thus has revenue streams from such newly built capacity. So the current system already functions to allow reasonable licensing proceedings.

Verizon is now reporting that the licensing process is too slow and is a "barrier to entry." However, we respectfully submit that it is our experience that Verizon's approach to licensing, not the licensing regulations, has been a significant cause of delay. Verizon's negotiators have tried to be cooperative in their negotiations, however, in our view, they have been directed to pursue licensing policies that appear to cause most of the delays in the process. For example, in its licensing proceedings in Massachusetts, Verizon has been insisting on cable license language that is unnecessarily onerous and complex, in the view of most experienced municipal officials, and this is a major cause of substantial delays. By way of examples: in Massachusetts, Verizon has refused to include any of its physical plant facilities within the cable license definition of "cable system"; Verizon has refused to accept use of the federal Cable Act definition of "cable system"; Verizon has refused to treat right-of-way management as a matter subject to Cable Act licensing powers of Issuing Authorities; Verizon has refused to allow cable license or Chapter 166A right-of-way regulation and regulation of "cable system" physical plant to the extent not inconsistent with Title II common carrier requirements. Verizon has insisted on a definition of cable license "gross revenues" with approximately 17 technical and complex exclusions from the definition of gross revenues. In contrast, other cable operators in Massachusetts routinely agree to a straightforward definition of "gross revenues" that simply includes all cable service-related revenues. From the municipal perspective, it has been Verizon's official licensing policies (not the municipalities), which are the major cause of delay. The Cable Division need only take judicial notice of Verizon's draft licenses within the Form 100 application to see the foregoing in public records. Municipal officials have frequently voiced this view of the Verizon licensing approach. It is incumbent on the Cable Division to understand these aspects of the initial licensing process. Indeed, in light of the terms and conditions sought by Verizon in its cable licenses, municipalities need to maintain existing timetables (not reduce them), It is therefore particularly inappropriate for the Cable Division to consider abbreviation of the licensing process timetables.

Further, the Cable Division should take judicial notice of the fact that most, if not all, Verizon license applications filed with Massachusetts municipalities **are not complete** applications insomuch as they omit specific financial proposals on support for public, educational and governmental access facilities and services. Towns and cities typically must proceed well beyond the Verizon application filing before they even have a Verizon PEG Access support proposal in hand. **Some towns in the Verizon licensing process have been waiting several months just to receive a complete Verizon PEG access proposal, which underscores that the licensing timetable must be measured from the time the Town has a completed proposal**. This is also compelling proof that Verizon should not be requesting a 90 day licensing process.

Compelling evidence indicates that Verizon has made choices not to utilize existing licensing procedures in a manner that would have maximized its cable service market reach. For example, in comments filed by the City of Boston in the FCC (Comments of the City of Boston, p.2 in FCC MB Docket No. 05-311; attached as Exhibit 1 to hard copy filed with Cable Division), the City of Boston reports that Verizon declined City of Boston requests to commence citywide licensing activity, which would have dramatically improved Verizon's ability to serve a substantial number of the state's cable subscribers. It was Verizon that chose to instead seek small and medium size communities for initial licensing, and forego opportunities to capture major shares of the Massachusetts market.

The reality is that the current rules already provide a framework for limiting the process to twelve months when a licensing process is initiated by a cable company filing of an application. 207 CMR 3.00 et seq.

We respectfully advise the Cable Division that municipal officials find the concept of a 90 day licensing process inadequate. It is extremely unfair to municipal officials to expect them to conclude major contract negotiations and deliberations and issue a responsibly drafted contract document within ninety days. This is especially true in licensing involving level playing field analysis and disposition of novel licensing issues raised by Verizon.

C. The Proposed Regulation Eliminates the Procedure for the Municipality to Identify and Issue a List of License and Community Needs Specifications

The initial licensing process identifies numerous important community issues, e.g., how cable system funds or cable operator facilities will be allocated to the provision of community television programming and facilities and/or local Institutional Network facilities to interconnect municipal buildings and schools, etc. In order for a municipality to responsibly ascertain its community programming and other technology needs, it must first have some period of time to identify these needs and outline these needs in system specifications, currently known as an Issuing Authority Report (IAR). The IAR is the functional equivalent of an "RFP" (Request for Proposal), a time-honored part of licensing activity. Unfortunately, the proposed regulation deletes the existing procedure that calls for a municipality to outline its system specifications in an IAR. The proposed regulations thereby eliminate an indispensable tool. Under the proposed rules, the application is filed, and the parties proceed to a public hearing, but there is no procedure for the municipality to specify its needs either before or during the period between the filing of the application and the hearing. The proposed approach thus eliminates the process by which a municipality publicly identifies its actual needs through system specifications, and assumes that the parties can go to public hearing without any such procedure. The abbreviation of the licensing timetable in this manner is particularly troublesome, as it does not merely shorten, but **eliminates** the municipal process of ascertaining and outlining system specifications. In other words, the proposed system might be faster, but certainly less informed, and certainly less likely to allow reasonable community participation. Such an approach works against municipal and public interests, as a more informed, participatory process is more likely to generate a license that is responsive to community cable needs.

D. The Proposed Regulation Arbitrarily Fails to Address Many Other Licensing Needs and Issues. The Cable Division Must Consider Numerous Other Licensing Process Issues and Factors.

While a 90 day licensing timetable would gut municipal ability to undertake a rational, deliberate and responsible process, the proposed regulation also fails to address numerous

important licensing issues and needs, and would undermine several long-established licensing practices that serve the public interest, as outlined and discussed below.

First, as discussed above, the proposed regulation would require completion of the licensing process 90 days from application filing, without regard to whether the application is even complete. Accordingly, we urge that the Cable Division consider and adopt a regulation that makes any timetable for completion of licensing measured from the time a **completed** application has been filed.

Second, the proposed regulation would allow only thirty days from the time of a public hearing for an Issuing Authority not only to approve or disapprove the application, but actually issue a license in the event of approval. This is particularly troublesome as municipalities require far more than thirty days from a public hearing to draft a final license with all the wording in a form ready for issuance when the hearing is occurring only two months into the licensing process. Accordingly, we urge that the Cable Division consider and adopt a regulation allowing the parties at least five (5) months for the holding of multiple negotiations sessions and the necessary drafting and revising of multiple documents.

Third, the draft regulation fails even to mention the need for the parties to engage in negotiations. The regulation should expressly provide for good faith negotiations as part of the initial licensing process, and provide for a reasonable period of time for negotiations, as urged above. It should be noted that if there are multiple applicants for an initial license, separate rules are in order, under Cable Division precedent, as the Cable Division has previously limited ex parte negotiations during the pendency of a competitive initial licensing process.

Fourth, the draft regulation does not provide for Issuing Authority right to ensure timely scheduling of negotiations or timely provision of additional information. The Issuing Authority should be able to impose reasonable timetables on the applicant's provision of negotiation proposals. Without such scheduling prerogatives, the applicant can ignore or delay reasonable Issuing Authority requests for further negotiation sessions to discuss a proposal. Likewise, without rules to ensure timely provision of answers to information requests, an Issuing Authority can find itself without information needed for informed licensing decisions. The Cable Division therefore should consider and adopt regulations enabling the Issuing Authority to properly schedule negotiations, propose amendments and obtain answers to information requests.

Fifth, the draft regulation contains extremely narrow language stating that the public hearing would be on the applicant's "qualifications" without any reference to the need for the hearing also to review the applicant's proposal. In light of the fact that one of the core objectives of licensing is to negotiate a mutually acceptable proposal, or to at least review and decide on the applicant's proposal, it is inappropriate to have the hearing and licensing decisions narrowly restricted to review of the applicant's qualifications, but not reference review of the proposal. The Cable Division should therefore consider and adopt regulations clarifying that the Issuing Authority hearing and licensing decision should include consideration of the applicant's proposal. For similar reasons the Cable Division should clarify that the Issuing Authority decision may also be based on what transpires during negotiations so long as the Issuing Authority can document that the applicant's position in negotiation is not reasonable regarding material cable needs.

Sixth, despite the reality of Issuing Authority need to consider level playing field issues between incumbent and competitive licensees, the draft regulation makes no reference to level playing field issues or procedures. This is unfair to both incumbent cable operators and Issuing Authorities and results in avoidable delay of the process. The Cable Division should consider and adopt a regulation requiring a competitive license applicant to include a reasonable level playing field analysis in its Form 100 license application. Such an analysis is appropriate in light of the frequent need of Issuing Authorities to have an analysis of whether the competitive licensee's proposal is substantially equivalent to the proposal of the incumbent. If the initial application contained such a level playing field analysis, the process would be expedited significantly.

Seventh, as discussed above, the Cable Division should maintain the regulation requiring the Issuing Authority to release an Issuing Authority Report to enable the Issuing Authority to publicly identify municipal specifications for a cable license. In order for the Cable Division to act rationally in this rulemaking, it must consider such a regulation in terms of its functionality and the benefits therefrom. The Cable Division's rulemaking analysis cannot be restricted to consider timetables only. The Cable Division will be acting arbitrarily if it does not consider the purpose and function of the existing Issuing Authority Report requirement before eliminating it, and likewise must consider the purpose and function of the other proposed alternative procedures described in these comments. Note, no evidence has been presented to show that the Issuing Authority Report does not serve a rational purpose. Deletion of the IAR process would be a significant and arbitrary change of course.

Eighth, the Cable Division should not proceed without first inviting comment on alternative initial licensing models. Initial licensing is far too important to be addressed in a narrow rulemaking focused on one operator's lone proposal for an unreasonably brief 90 day licensing period. It is evident that other models for initial licensing exist and Cable Division deliberations should take place in the context of a rulemaking that sets forth other models more likely to serve the public interest.

Ninth, as noted above, the rulemaking is fatally flawed for not referencing the need for the Issuing Authority proceedings and hearing to address the adequacy of the Applicant's proposal. The proposed regulation only calls for Issuing Authority decision based on review of the Applicant's "qualifications." But the heart of licensing is negotiating a proposal, so the regulation must reflect this reality.

III. Responses to Specific Cable Division's Questions

A. Cable Division Questions: "First, we raise the issue of what is the appropriate forum for this discussion?" and "…whether [state] regulatory action is appropriate at this time." Pp. 6, 8. add citation

Noting that initial cable licensing rules are being comprehensively reviewed by the Federal Communications Commission in a pending rulemaking, and that the United States Congress is in the process of considering major cable licensing amendments, the Cable Division appropriately asks whether a state cable agency is even the appropriate **forum** for acting on licensing rules at this time**.** In light of the now significant possibility of federal legislation, and other federal changes, the Cable Division asks the corollary question: whether this an appropriate **time** for action at the state level. **(**Cable Division

NPR at pp. 6 and 8) The Commenting Parties urge that it would be premature, potentially wasteful and possibly futile to adopt new state rules at this time, while there is a significant possibility of federal licensing changes, including the adoption of federal licensing that could eliminate the need for abbreviated local licensing. The Cable Division, as a state agency, should await action by a federal forum to avoid unnecessary time and cost of rulemaking activity that stands a good chance of being preempted.

In the event federal changes are not adopted in this session of Congress, there would nevertheless be a significant chance of amendments in the subsequent session of Congress, so the Cable Division should in any event defer action on Verizon's rulemaking until federal deliberations are completed. For the foregoing reasons, **the Commenting Parties reply to the Cable Division's first two questions by strongly urging that the Cable Division is plainly not an appropriate forum at this time, and State regulatory action is inappropriate at this time.** If, at some future time, the possibility of federal cable restructuring becomes more remote, then the Cable Division might more timely address these issues. However, any deliberations should reflect the Cable Division's actual experience with licensing, which by all measures shows that licensing requires, on average, not less than 9 – 12 months to be conducted responsibly. To serve as an appropriate forum, the Cable Division likewise must honor its own precedents and jurisprudence which consistently emphasized the paramount role of the local licensing authority in licensing. See e.g., United Cablevision Funding, LP v. Townsend, Docket No. A-45, at p.6 (November 30, 1984), emphasizing the "paramount" role of the local Issuing Authority in cable licensing.

B. Should the Cable Division formally amend regulations requiring solicitation of bids in national trade journals; and should the Cable Division reduce advertised notice period from 60 to 30 days? (Notice of Proposed Rulemaking, p.8)

The Issuing Authorities are of the view that most municipalities prefer waiver of the national advertising requirement. The Issuing Authorities believe that reasonable expediting of the process would result from reducing to 30 days the locally advertised timetable for filing applications following publication of a local legal advertisement.

C. Should the Cable Division continue the procedure whereby an applicant receives both a provisional and final License. (Notice of Proposed Rulemaking, p.8)

The Cable Division already has waiver authority under its existing regulations by which it could authorize final licensing without provisional licensing. Based on recent experience with both RCN and Verizon, the Commenting Parties urge that the parties should be left with the choice of using either only a final license, or executing provisional and final licenses separately. In the case of an operator with substantial assets and infrastructure already existing in a community, an Issuing Authority may prefer conducting a simple one-license process in lieu of a more time-consuming two-step provisional-then-final license process. On the other hand, the provisional license route may have public interest benefits when initial licensing involves a new venture or start-up lacking significant resources or track record. In such circumstances it would be reasonable for Issuing Authorities to retain the discretion to require a provisional license period during which the licensee proves ability to build and prepare for activation, with the final license held back until proof of performance and capability is shown.

D. Is Verizon's proposal that IA decide on a grant or denial within 3 months reasonable.

This question is addressed at length and in detail in Sections II and III above.

(IV) CONCLUSION

It is the position of the Commenting Parties that the public record of all past initial licensing, as well as current Verizon licensing, makes abundantly clear that 90 days for initial licensing would be grossly inadequate and impossible for conducting reasonable and fair negotiations, internal review, briefings of Selectmen, public hearings, necessary drafting and the myriad tasks necessary for identifying community cable needs and concluding important contract negotiations. The fact that a 90 day licensing period is unreasonable and arbitrary is made clear by record evidence concerning past licensing, and by viewing the totality of tasks involved in licensing with recognition of the intrinsically complex and deliberative nature of contract negotiations.

Further, Verizon's proposed regulation would result in numerous and fatal procedural flaws, including but not limited to deletion of any procedure for issuance of cable specifications (Issuing Authority Report); omission of any reference to negotiations procedures; omission of procedures for obtaining supplemental information; omission of reference to need for provision of a good faith level playing field analysis; omission of any reference for municipal review of and decision on applicant's "proposal" (instead of review of qualifications only); and omission of inquiry into any other feasible licensing models or alternatives. Of particular importance, the proposed regulation would be arbitrary because it would commence a truncated timetable without tolling the timetable from the filing of a completed application, and there is no definition of or consideration of what constitutes a completed application. This is critical because many initial license applications lack any specific proposal on PEG Access, INet or interconnection support, making it impossible to follow a fair timetable when no completed application is available for review.

The current licensing regulations have worked well for the cable industry, municipalities and the general public. The fact that the existing framework is not overly burdensome is apparent from decades of history showing that those who have sought to compete always could do so in a reasonable timeframe subject to merely agreeing to engage in reasonable negotiations with the communities they seek to serve. Local licensing has been a dynamic, creative and positive system for Massachusetts. It has brought cable operators into partnerships with the towns and cities of our Commonwealth, forging relations and benefits for all involved. It is precisely this kind of regulatory system that enables owners of cable television systems to meet with the representatives of the people who actually use their technology to discuss and tailor technology to respond to local needs. Given the fact that these systems request use of valuable and costly public ways, it would be unfair and unreasonable to undermine the process by which users of the public ways negotiate with the municipal managers of the public ways. The Cable Division should not gut the current regulatory process by eliminating meaningful and important local input. The public interest requires the continuation, not the suppression, of such local participation.

Respectfully submitted by:

The Town of Arlington
The Town of Bellingham
The Town of Belmont
The Town of Brookline
The Town of Canton
The Town of Dartmouth
The Town of Dedham
The Town of Grafton
The Town of Groveland
The Town of Hingham
The Town of Lakeville
The Town of Littleton
The Town of Milton
The Town of Natick
The Town of Needham
The City of Newton
The Town of Northborough
The Town of Norwood
The Town of Sudbury
The City of Taunton
The Town of Westford
The Town of Wilmington
The Town of Wilbraham
Massachusetts Chapter of the Alliance for Community Media
Northeast Region of the Alliance for Community Media
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